IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 5702 of 2005(D)

OS.137/1996 of I ADDL.SUB COURT,ERNAKULAM

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PETITIONERS:

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1. LALLY MATHEW, D/O.MATHEW,
   KURUKUNNEL HOUSE, P.O.VELLAYAMKUDI,
   KATTAPPANA VILLAGE, IDUKKI DISTRICT.

2. DHANYA ANIL(MINOR) AGED 11 YEARS)
   D/O.1ST PETITIONER LALY MATHEW, REP. BY
   1ST PETITIONER GUARDIAN THROUGH POWER HOLDER
   MATHEW FATHER 1ST PETITIONER.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS: DEFENDANTS 2 TO 4

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1. RADHAMANI AMMA (DIED).

2. ANJALI(MINOR 11 YEARS),
   DE/O.DEEPA,. 1ST DEFENDANT, REP. BY 1ST RESPONDENT

3. M.R.BINDU, D/O.RADHAMANI AMMA,
   KAUSTHUBHAM, T.C.X/928, AMPALATHATTU NADA,
   MUKKOLAKKAL P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.JAGADEESH CHANDRAN NAIR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 5702 OF 2005

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF THE COMPROMISE PETITION.

EXT.P2 : TRUE COPY OF THE PETITION IA NO.164 OF 2005.

EXT.P3 : TRUE COPY OF THE ORDER DT.13.01.2005 BY THE I ADDL. SUB COURT.

EXT.P4 : TRUE COPY OF THE ORDER DT.02.02.05.

/TRUE COPY/

PA TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C) No. 5702 OF 2005

Dated this the 3rd day of August, 2007

JUDGMENT

Ext.4 order of the learned Subordinate Judge is under challenge. Under Ext.P4, taking the view that the parties are not interested in seeing that the issues are settled in the Adalath, the learned Judge has proceeded to include the suit in a supplementary special list.

2. I have heard the submission of Mr.K.K.Mohammed Ravuf, learned counsel for the petitioners and Sri.Jagadeesh Chandran Nair, counsel for the respondents. It is conceded by both sides that issues between the parties have been compromised. In fact a subsequent suit between the parties was also compromised and Ext.P1 is the compromise petition pursuant to which even a final decree has been passed. Under Ext.P4 it is seen that the learned Subordinate Judge is blaming the parties for the case not reaching the Adalath. I do not think that the blame placed by the Subordinate Judge on the parties for the case file not reaching the Adalath is justified. Understandably, it was with the objective of facilitating refund of the court fee and thereby to save litigational cost that the parties requested for a reference of the matter to the Adalath. It is too much to think that the parties will be

lethargic in the matter of the case file reaching the Adalath in the circumstances obtaining in this case. Both sides submitted before me that the parties do not have any role in the matter of despatching the file to the Adalath. Under these circumstances, I set aside Ext.P4 and direct the learned Subordinate Judge to refer OS No.137 of 1996 to one of the regular Adalaths being conducted under the aegis of the District Legal Services Authority. The learned Subordinate Judge will ensure that the case is considered in the earliest possible Adalath. Whatever is needful will be done by the learned Subordinate Judge in the matter.

3. I am told that the petitioners are represented by the father of the 1st petitioner as their power of attorney holder before the court below. If the learned Judges of the Adalath comes to accept the settlement between the parties and become inclined to order refund of full court fee, the court fee refundable to the petitioners is to be paid to their counsel, it is submitted. I am told that the power of attorney holder for the petitioners is having terminal condition of cancer which prevents him from moving about freely. Hence it is ordered that court fee refund be given to the counsel appearing for the petitioners considering the special circumstances of this case notwithstanding the directions in the

judgment of the Division Bench which insists that court fee refund shall be given to the parties in the absence of directions. The court fee which is refundable to the respondents will be paid to their power of attorney holder.

PIUS C. KURIAKOSE, JUDGE

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